No. 80-1438

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

TENNESSEE RIVER PULP AND PAPER COMPANY AND TRAVELERS INSURANCE COMPANY, *Petitioners,*

v.

DONALD M. SEGER, *Respondent.*

On Appeal From The Supreme Court of Mississippi

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

The Respondent, Donald M. Seger, had been employed by Charles Smith, who had been hired by the Petitioner, Tennessee River Pulp and Paper Company,

for the purpose of cutting and delivering or cutting and hauling pine timber. While engaged in such work, the Respondent was severely injured when a tree fell on him, causing him to lose the use of both of his legs.

Mr. Smith and the Petitioner had executed thirty work agreements over a two-year period, the agreements providing that the status of Mr. Smith was to be that of an independent contractor. However, the actual work relationship was more like that of employer-employee. For one thing, the Petitioner had the authority to exercise a great deal of control over the activities of Mr. Smith and his employees. Agents of the Petitioner had inspected the work site on three different occasions. They had instructed Mr. Smith to stay off the small timber, to cut all the trees low enough so that a tractor could go over them, and not to cross certain lines. According to the short term contract he had made, Mr. Smith was to trim all limbs and knots smooth with the surface of the log. His truck was required to be loaded in solid lots of pine and hardwood, and of either short wood or logs. Additional elements of control were stated as follows in the Order of the Mississippi Workmen's Compensation Commission:

> He could not mix loads, by either specimens or length. All trees had to be cut as close to the ground as reasonable [*sic*] practical. Smith was required to remove all logging debris, tops, limbs, and other debris from the roads, ditches and fire breaks on the land. He could not terminate logging operations in the natural logging area until he had logged all merchantable timber. Title to the pulpwood and trees from which the pulpwood was produced, was in and remained in Tennessee River Pulp & Paper Company. His use of the land was nonexclusive. Tennessee River Pulp & Paper Company could contract with others on the same

> tract or carry out any activity which it deemed necessary or desirable. All bulldozer work was done, when needed, by Tennessee River Pulp & Paper Company. Tennessee River Pulp & Paper Company directed the time in which Mr. Smith and his crew could haul and deliver. No deliveries could be made on holidays, plant vacations, or when Tennessee River Pulp & Paper Company was oversupplied with wood. Although no deliveries were made to the mill at Counce, Tennessee, all cutting and hauling of timber would be suspended should the operation of Tennessee River Pulp & Paper Company's mill at Counce, Tennessee, be suspended by reason of any event of force majure.

Petitioner's App. 16a, Mississippi Workmen's Compensation Commission Order. If the Petitioner was not satisfied that Mr. Smith was fulfilling his obligations, the Petitioner could simply refuse to enter into any further short term contracts.

In addition, the contract specified that the Petitioner would make weekly payments for all timber delivered during the preceding week. From each payment made, the Petitioner deducted an amount which was applied to Mr. Smith's personal bank note which financed his equipment.

Finally, Mr. Smith had been engaged in this type of work exclusively for the Petitioner for a year prior to the accident. He did not hold himself out to the public as performing an independent business. Instead, he devoted his time to employment with the Petitioner.

For these reasons, the Mississippi Workmen's Compensation Commission, the Circuit Court of Webster County, Mississippi, and the Mississippi Supreme Court (See Petitioner's Appendix for opinions) all held that

despite the language in the contract, the work relationship was that of employer-employee, and the Respondent was, therefore, entitled to workmen's compensation benefits for his injuries.

ARGUMENT

Point I: The Ruling Of The Mississippi Supreme Court Was Not In Contravention Of Article I, Section 10, Clause 1 Of The United States Constitution.

Article I, Section 10, Clause 1 of the United States Constitution provides that: "No State shall . . . pass any . . . law impairing the obligation of contracts." It is a well established principle that this provision is directed only against legislation and not against impairment by judgment of the courts. *Barrows* v. *Jackson*, 346 U.S. 249 (1953) (Court held that state court could refuse to enforce a racially restrictive covenant); *Mariniello* v. *Shell Oil Co.*, 511 F.2d 853 (3d Cir. 1976) (franchise agreement which allowed for termination of such agreement without cause was invalidated by state court); *In re Hoover*, 447 F.2d 195 (5th Cir. 1971) (court refused to enforce agreement of parties under conditional sales contract). Therefore, it is clear that the Mississippi Supreme Court's refusal to enforce strictly the provision stating that an independent contractor status was being created was not in violation of the contract clause.

Moreover, to make such a contract provision completely determinative of the type of work relationship involved would be contrary to the established law of Mississippi and numerous other jurisdictions. Mississippi law in this regard was set forth in *Boyd* v. *Crosby Lumber & Manufacturing Co.*, 250 Miss. 433,

166 So. 2d 106 (1964). The court held that in determining whether a worker is an employee or an independent contractor, two tests are considered. One test looks to the degree of control exercised over the worker, and the other examines the relative nature of the work. Regarding the latter test, the court stated:

> The latter contains these ingredients: "the character of the claimant's work or business—how skilled it is, how much of a separate calling or enterprise it is, to what extent it may be expected to carry its own accident burden and so on—and its relation to the employer's business, that is, how much it is a regular part of the employer's regular work, whether it is continuous or intermittent, and whether the duration is sufficient to amount to the hiring of continuing services as distinguished from contracting for the completion of a particular job." 1 Larson, §43.52; see Comment, Employee or Independent Contractor, 26 Miss.L.J. 250 (1955).

166 So. 2d at 110. The court went on to hold that even though the contract in that case contained language to the effect that the person who hired the worker was to "have no control whatever over the matter," the actual circumstances of the relationship, not the mere language of the contract, was determinative. Accordingly, despite the language of the contract, the worker was held to be an employee since both the control test and the relative nature of the work test indicated that status. The court adopted the rationale which had been set forth earlier in *First National Bank of Oxford* v. *Mississippi Unemployment Compensation Commission*, 199 Miss. 97, 23 So. 2d 534, 535 (1945). According to the court in *Boyd*:

> If the real relationship, under such a state of facts, could be changed by a contract device such as last mentioned, employers could write themselves out

> from under nearly every workmen's compensation law or unemployment compensation statute in existence today.

166 So. 2d at 112. Therefore, the law of Mississippi and the public policy behind it regarding this matter is clear. The petitioner's contention that in the present case the provision declaring the worker's status as that of an independent contractor should be completely determinative of the question should be rejected since to determine the worker's status solely on the basis of that provision would be contrary to Mississippi law and public policy. As the cases mentioned earlier indicate, for the courts to disregard that provision does not amount to an impairment of contracts under *U.S. Const.* art. 1, §10, cl. 1. Such impairment can arise only by legislative action.

The interpretation and enforcement of contracts is traditionally within the province of state courts, and invalidation of contract clauses held repugnant to state public policy is a proper exercise of the state judicial function. *Mariniello, supra*, 511 F.2d at 858. Therefore, this Court should show great reluctance to interfere with the decision of the Mississippi Supreme Court. This is especially true in light of the fact that there is nothing unusual about the Mississippi law on this question. Numerous other jurisdictions have reached similar conclusions about provisions like that involved in the case at bar. In *Cimorelli* v. *New York Central Railway*, 148 F.2d 575 (6th cir. 1945), the court stated:

> We do not think the provision of the agreement that the Duffy Company was to perform the work as an independent contractor with exclusive supervision of the method and manner of performance is conclusive. "Neither the form of expression on the one hand, nor the name on the

> other, is conclusive. We must see what rights and privileges were in fact granted, what burdens and obligations assumed." Chicago, R. I. & P. Ry. Co. v. Union Pac. Ry. Co., C.C., 47 F. 15, 22. The spirit and purpose of an agreement, as well as its letter, must be considered in the interpretation and application of a contract. What a contract is styled by the parties does not determine its character or their legal relationship. Union Pacific Ry. Co., v. Chicago &c R. Co., 163 U.S. 564, 582, 16 S.Ct. 1173, 41 L.Ed. 265.

Id. at 578. *Cimorelli* was relied on in *Moore* v. *Chesapeake & Ohio Railway*, 493 F. Supp. 1252, 1262 (S.D.W. Va. 1980), to reach the same conclusion. *See also Scheuer* v. *Central States Pension Fund*, 358 F. Supp. 1332 (E.D. Wis. 1973); *Manahan* v. *Daily News - Tribune*, 50 Ill. App. 3d 9, 365 N.E.2d 1045 (1977); *Smith* v. *Department of Employment*, 62 Cal. App. 3d 206, 132 Cal. Rptr. 874 (1976); *Hendrix* v. *City of Maryville*, 58 Tenn. App. 457, 431 S.W.2d 292 (1968); *Humphreys* v. *Texas Power & Light Co.*, 427 S.W.2d 324 (Tex. Civ. App. 1968).

Point II: No Violation Of The Petitioner's Due Process Rights Results From The Mississippi Supreme Court's Affirmation Of The Lower Court's And Full Commission's Actions.

It is clear that under Mississippi law the Workmen's Compensation Commission is to be the finder of facts in workmen's compensation cases. In *Bruton* v. *Mississippi Workmen's Compensation Commission*, 253 Miss. 694, 178 So. 2d 673 (1965), the court stated:

> It is a well established rule of law in this state, as shown by numerous decisions of this Court, that the Mississippi Workmen's Compensation Commis-

> sion, and not the attorney referee, is the trier of facts in compensation cases. Harbert Constr. Corp. v. Hughes, 250 Miss. 858, 168 So. 2d 506 (1964) and cases therein.

178 So. 2d at 675.

In its capacity as finder of fact, the Commission carefully examined the record of the proceeding below, heard arguments from counsel, and then made the determination which it is authorized by law to make. Subsequently, the Circuit Court of Webster County, Mississippi, and the Mississippi Supreme Court affirmed that decision. The courts of Mississippi having upheld the validity of the determination of the Commission, this Court should do the same. As stated in *Bell* v. *State of Maryland*, 378 U.S. 226 (1964), the Court has a tradition of deference to state courts on questions of state law. *Id.*, at 237. The courts of Mississippi correctly found no due process violations, and this Court should be extremely reluctant to reach a contrary conclusion.

CONCLUSION

The Respondent respectfully requests that the court deny the Petitioner's request for a Writ of Certiorari since there are no special and important reasons for granting the Writ as required by *Sup. Ct. R.* 17(1).

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